

1
2
3
4
5
6
7
8
9

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12 KENNY BENETIZ,)
13 Plaintiff,) CASE NO. CV 09-9303-R
14)
15 vs.)
16 CITY OF MONTEBELLO,)
17 Defendant.)
18)

FINDINGS OF FACT

20 1. Plaintiff, KENNY BENETIZ is a member of the Marine Corps, and is currently on
21 individual ready reserve.

22 2. Plaintiff was an active member of the Marine Corps from August 2002 through
23 November 2006 and was placed on individual ready reserve after his active duty.

24 3. Plaintiff remained on individual ready reserve until around August 2010.

25 4. Plaintiff was hired by the Defendant, CITY OF MONTEBELLO, as a police trainee in
26 March 2007.

27 5. In May 2007 Plaintiff graduated from the police academy.

28 6. Plaintiff was hired by the City as probationary police officer in or around June 2007.

1 7. In or about 2008, Plaintiff was notified by the Marine Corps that he was being activated
2 for military service.

3 8. Plaintiff immediately notified the City about his military activation.

4 9. In or about January 2009, Plaintiff began his military leave of absence from the City.

5 10. Plaintiff was deployed to the war zone in Iraq in January 2009.

6 11. Plaintiff received two thirty day periods of paid military leave beginning in January
7 2009 and then in July 2001. The remainder of the time he was on active duty, Plaintiff received
8 differential pay.

9 12. Plaintiff returned to employment with the City on October 27, 2009.

10 13. Plaintiff has impeccable personnel records and he has performed effectively and
11 competently as a police officer.

12 14. Due to time served in the military, the City denied Plaintiff benefits during his military
13 leave—specifically the City denied Plaintiff accrued time and payment into his CalPERS/pension
14 while he was away fighting the war.

15 15. Plaintiff made several attempts to receive benefits that he was entitled to; however, the
16 City rebuffed his attempts.

17 16. The City has a military leave policy located at V-B-15 City of Montebello
18 Administrative Policy Subject Military leave. It states: “any employee on approved active military
19 leave of absence of order military leave shall, upon return in accordance with legal time limits, be
20 reinstated to a position of like seniority, status and pay and shall received the same vacation, sick
21 leave and holiday or annual leave privileges as he/she would have enjoyed had he/she not been
22 absent[;];” and “any incomplete probationary period of an employee who takes a temporary
23 military leave of absence or goes on ordered military duty must be completed upon reinstatement.

24 ...”

25 17. The City has a Sick Leave Policy at page 26, Section 215 of the City’s Civil Service
26 Rules and Regulations. It states in pertinent part: “Sick leave, being leave with pay shall accrue to
27 all classes of employees . . . (g) maternity leave: sick leave may be used during such time an
28 employee is on authorized maternity leave . . .”

1 18. The City considers an “unpaid leave of absence” as having no accrued time off
2 available. Employees do not accrue time off on unpaid leaves of absence, but they do accrue
3 annual leave if they are on paid leaves of absence, or if they are taking time off with their accrued
4 time off hours.

5 19. Military leave is an unpaid leave of absence. Another unpaid leave of absence occurs
6 when the City places someone on leave without pay because of a personnel action. Beside these
7 “unpaid leaves” there are no other unpaid leaves of absences at the City.

8 20. City employees taking time off with accrued time off are entitled to accrue more time
9 off during their leave. These “leaves” include sick time, leaves of absence and/or medical leaves.

10 21. City employees taking a worker's compensation leave are allowed to accrue time off
11 during their leave of absence.

CONCLUSIONS OF LAW

13 1. The City violated USERRA, 38 United States Code section 4301 when the City denied
14 Plaintiff annual leave accrual while he was on military leave. Since the City allows employees
15 taking similar non-USERRA leaves to accrue vacation while on these leaves, the City should have
16 granted Plaintiffs the same rights. Moreover, since the City has its own policy granting Plaintiff
17 annual leave hours during his military absence, Defendants violated USERRA and its own policy.
18 Also, the City treats military leave similar to a disciplinary leave, which is inappropriate under
19 USERRA. Had the City complied with federal law and it own policy, Plaintiff would have been
20 allowed to accrue vacation while on military leave. 20 C.F.R. § 1002.150(c); 20 C.F.R.
21 §1002.151; 38 U.S.C. § 4316(b)(1)(B); *See Rogers v. City of San Antonio*, 392 F3d 758, 769-770
22 (5th Cir. 2004); 38 U.S.C. § 4311(b); 20 C.F.R. § 1002 at 72546, (the provisions of USERRA are
23 “to be liberally construed for the benefit of those who left private life to serve their country in its
24 hour of great need.”); *see also*, 20 C.F.R § 1002.7 (USERRA supersedes “any contract, agreement,
25 policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or
26 benefit provided in USERRA.”); 38 U.S.C. § 43029(b); *Petty v. Metropolitan Government of*
27 *Nashville-Davidson County*, 538 F.3d 431,441 (6th Cir. 2008).

28 | // / / /

1 2. Defendants violated USERRA when they did not pay into Plaintiffs pension/CalPERS
2 during the entire time Plaintiff was on military leave. 38 U.S.C § 4318 (2)(A) – (B).

3 Dated: September 27, 2010.



4 5 MANUEL L. REAL
6 6 UNITED STATES DISTRICT JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28